

Bill of Rights  
Congress of the United States  
1789

## The 6th Amendment

### The Sixth Amendment

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED. WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAWS AND TO BE INQUIRED OF THE NATURE AND CAUSE OF THE ACCUSATIONS. TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

## SIXTH

6

This amendment was a person accused of a crime has a right to be brought to trial quickly. That trial must be public — in other words, it must not be held in secret. Accused persons must be told what evidence they have against them. They must be allowed to see and hear all witnesses and to put them on trial. And they have a right to make witnesses give up what they can help them. Finally, the SIXTH AMENDMENT says any accused person has a right to the help of a lawyer during his or her trial.

## AMENDMENT

OTHER TRIAL RIGHTS OF PERSONS ACCUSED OF CRIMES.



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## Buck v. Davis

From Last Year

**Issue:** Whether the Fifth Circuit imposed an unduly burdensome Certificate of Appealability (COA) standard when it denied petitioner on his motion to reopen the judgment.

Defendant's claim = trial counsel was constitutionally ineffective for knowingly presenting an "expert" who testified that petitioner was more likely to be dangerous in the future because he is Black, where future dangerousness was both a prerequisite for a death sentence and the central issue at sentencing.

OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES

**BUCK v. DAVIS,**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT  
No. 15–8049 - Decided February 22, 2017



- 6-2 opinion written by Chief Justice John Roberts
- Reversal of death sentence for ineffective assistance
- **Issue:** Defendant's attorney introduced evidence defendant would be more likely to commit violent acts because he was black.

Duane Buck, was convicted of capital murder in a Texas court after the 1995 murder of his ex-girlfriend and a male friend.

**Texas had conceded the same issue in 5 other cases**



## BUCK v. DAVIS

- Texas law = a jury may only impose the death penalty if it finds unanimously and beyond a reasonable doubt a defendant is likely to commit future violence.
- Defense called Dr. Walter Quijano
- “In determining whether Buck was likely to pose a danger in the future, Dr. Quijano considered seven “statistical factors.”
- “4. **Race. Black:** Increased probability. There is an over-representation of Blacks among the violent offenders.”



## BUCK v. DAVIS

- Despite knowing Dr. Quijano's view defense counsel called Dr. Quijano to the stand to discuss the "statistical factors."
- Counsel elicited testimony from Dr. Quijano he thought favorable to Buck, as well as his ultimate opinion that Buck was unlikely to pose a danger in the future.
- Dr. Quijano's report was admitted into evidence.

Certain factors were "know[n] to predict future dangerousness" and race is one of them.

"It's a sad commentary that minorities, Hispanics and black people, are over represented in the Criminal Justice System."



## BUCK v. DAVIS



**On Cross:** “You have determined that the sex factor, that a male is more violent than a female because that’s just the way it is, and that the race factor, black, increases the future dangerousness for various complicated reasons; is that correct?”

“Yes.”

**Closing Argument:** “You heard from Dr. Quijano, . . . who told you that . . . The probability did exist that [Buck] would be a continuing threat to society.”



**Dr. Quijano**



## BUCK v. DAVIS


**Regarding Effective Assistance:** "...the fact that Quijano's testimony was called by Mr Buck's own counsel indicates a lack of awareness of their own racial bias among those charged with advancing a defendant's best interests."

- **Regarding Race:** Race at trial was not *de minimis* and therefore not prejudicial.
- "When a jury hears expert testimony that expressly makes a defendant's race directly pertinent on the question of life or death, the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses."

## BUCK *v.* DAVIS

- JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.
- “Having settled on a desired outcome, the Court bulldozes procedural obstacles and misapplies settled law to justify it. But the majority’s focus on providing relief to petitioner in this particular case has at least one upside: Today’s decision has few ramifications, if any, beyond the highly unusual facts presented here. The majority leaves entirely undisturbed the black-letter principles of collateral review, ineffective assistance of counsel, and Rule 60(b)(6) law that govern day-to-day operations in federal courts.”





## BUCK *v.* DAVIS

- **Two Issues for Consideration:**

- **1 - Ineffective Assistance Of Counsel** to get at other problems in the criminal justice system.
  - *Strickland v. Washington* has allows far worse!

- **2-The Illusive Issue of Racial Bias in the system:**

- “The six cases in which Dr Quijano testified do not on their own constitute an overwhelming indication of explicit racial bias in the American legal system ...”





Lee v. United States,  
No. 16-327, review  
granted 12/14/16.



➤ **Ineffective Assistance of Counsel Case**

- **Issue:** What happens when an attorney wrongly advises defendant he won't face deportation post-conviction?
- The circuits are split on whether it's always irrational for a defendant to reject a plea offer when there is strong evidence of guilt and when the plea would result in deportation.
- Was the defendant "prejudiced" by the ineffective assistance?



Lee v. United States,  
No. 16-327, review  
granted 12/14/16.



- Jae Lee is a South Korean national in U.S. for 20 years since he was 13 years old.
- Lee pleaded guilty to possessing ecstasy with intent to distribute.
- Lawyer told him he would not be deported.
- He later sought to get out of the conviction on the basis of ineffective assistance of counsel.
- The government conceded the attorney's advice was wrong, but argued the error did not prejudice Lee.



Lee v. United States,  
No. 16-327, review  
granted 12/14/16.



- The Sixth Circuit held Lee's attempt to force a trial, notwithstanding the evidence against, him was not rational, and therefore refused to vacate the conviction.
- Follow up to *Padilla v. Kentucky*.
- Does a defendant have to show prejudice from the ineffective assistance of counsel's incorrect legal advice?

SUPREME COURT OF THE UNITED STATES  
**Pena-Rodriguez v. Colorado**

**From Last Year**

**COMING  
ATTRACTIONS**

A 3D architectural rendering of a city skyline at night. In the foreground, a large, multi-tiered, cylindrical structure sits on a platform. On top of this structure is a large, illuminated sign that reads "COMING ATTRACTIONS" in bold, white, sans-serif capital letters. The sign is mounted on a dark, rectangular base. The background shows a city skyline with various buildings, some of which are lit up. The sky is dark with some clouds. The overall scene is presented in a black and white, slightly desaturated style.

OCTOBER TERM, 2016  
SUPREME COURT OF THE UNITED STATES  
**PENA-RODRIGUEZ v. COLORADO**  
CERTIORARI TO THE SUPREME COURT OF COLORADO  
No. 15-606. Argued October 11, 2016—Decided March 6, 2017

**Issue:** When a juror makes a clear statement he relied on racial stereotypes or animus to convict a criminal defendant does the Sixth Amendment non jury impeachment rule still stand?

- ❖ Racetrack worker Miguel Angel Pena-Rodriguez = native of Mexico, entered the United States as a child; his formal immigration status is not clarified in the case.)
- ❖ Tried for sexual harassment of two teen-aged girls.
- ❖ Guilty of three misdemeanor charges, sentenced to two years on probation, and required to register as a sex offender.

SUPREME COURT OF THE UNITED STATES  
**Pena-Rodriguez v. Colorado**

❖ Before trial, the judge told the defense sometimes jurors in the court in Colorado often had voiced their dislike of individuals who had entered the U.S. illegally. Defense lawyers, however, did not ask any of the potential jurors about that possibility.



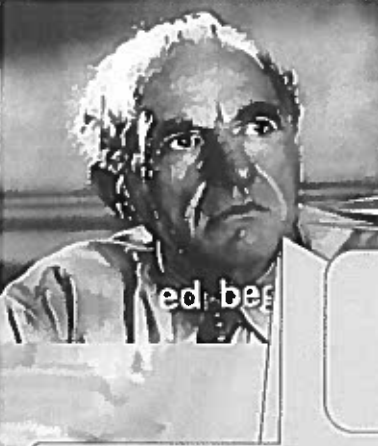
henry ford

❖ After trial, two jurors told defense lawyers that one of the jurors had made racist comments about Mexicans.



joseph sweeney

SUPREME COURT OF THE UNITED STATES  
**Pena-Rodriguez v. Colorado**



Pena-Rodriguez committed the crime because he was “a Mexican.”

“Mexican men take whatever they want.”

Mexican men had “a bravado that caused them to believe they could do whatever they wanted with women.”

Mexican men were “physically controlling of women.”

An Hispanic witness can’t be believed because he was “an illegal.”



SUPREME COURT OF THE UNITED STATES  
**Pena-Rodriguez v. Colorado**

**Held:** When a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict ... the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.





KENNEDY

SUPREME COURT OF THE UNITED STATES  
**Pena-Rodriguez v. Colorado**

➤ “blatant racial prejudice is antithetical to the functioning of the jury system and must be confronted in egregious cases like this one,”



➤ **Dissent:** “The present case concerns ... the age-old rule against attempting to overturn or “impeach” a jury’s verdict by offering statements made by jurors during the course of deliberations. For centuries, it has been the judgment of experienced judges, trial attorneys, scholars, and lawmakers that allowing jurors to testify after a trial about what took place in the jury room would undermine the system of trial by jury that is integral to our legal system.”